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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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October 6, 2003

Ref: 8ENF-L

**SENT VIA REGULAR MAIL**

John R. Jacus  
Davis, Graham & Stubbs  
1550 17<sup>th</sup> Street, Suite 500  
Denver, CO 80202

Re: Hecla Mining Co., Docket No. RCRA-8-99-06  
Review of Hecla Comments on Draft RCRA 7003  
Consent Order

Dear John:

Thank you and John Galbavy for providing EPA with Hecla's comments on the draft consent order and closure plan materials submitted on September 17, 2003. Based on my and Eric Johnson's review of the submittals, I believe that we are close to finalizing the order. This letter is intended to address the few outstanding sticking points at issue in the consent order. Second, this letter sets forth EPA's understanding of the agreed-upon closure plan revisions based on the recent facility inspection and comments from the Paiute Tribe ("Tribe") and Shivwits Band of Paiute ("Band"). Third, and relatedly, EPA's questions and proposed changes concerning the closure plan are described herein.

With regard to the consent order, please refer to the attached revised draft document ("draft 10/2/2003") based on Hecla's September 17<sup>th</sup> comments. Per my read of the document, the two main areas that we continue to have disagreement over concern the possible performance of additional activities and the language characterizing the pond and its contents as harmful. With the exception of these two issues, EPA has accepted many of Hecla's other proposed changes in an attempt to compromise as much as possible to move this process forward without jeopardizing the basis or authority for this order. As you review the document, please note that only the wording still at issue remains highlighted in yellow.



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With regard to the characterization language, please note that EPA has adopted as many of Hecla's proposed changes as possible. For example, in paragraph 18, page 3, EPA is willing to delete the reference to the stock watering pond and refer instead to bird and wildlife pond access in support of its imminent and substantial endangerment authority. While EPA is unwilling to delete the last sentence of paragraph 42, page 7, per Hecla's suggestion, EPA is willing to delete the last sentence of paragraph 43, page 7. EPA also is willing to delete the second half of the last sentence in paragraph 46, page 7, referring to ground saturation and crystal deposits, as proposed by Hecla.

With regard to paragraph 57, page 10, EPA is requesting that Hecla agree to post the signs in Spanish as well as English given the number of spanish-speaking migrant workers in the local area. EPA is willing to delete the following language from the sign: "This area may be dangerous to human health." EPA is unwilling to delete the language as proposed in paragraph 76, page 14. As this language does not impose any additional liability on Hecla but rather simply states the consequences for false reporting, EPA requests that Hecla agree to leaving this language in. Lastly, with regard to characterization language, EPA is amenable to the deletion of "threat" in the first sentence, paragraph 81, page 15.

As for the language pertaining to additional tasks, it is EPA's position that the inclusion of such language is necessary to provide EPA with the appropriate authority in this particular document to act in the event of unforeseen problems. Without this language, EPA would have to initiate a new and separate action to address problems resulting from performance of the consent order; such efforts would be untimely and burdensome. Because the "Dispute Resolution" section has been added to the document and provides, in part, for disagreements over additional tasks requested by EPA, EPA is asking that Hecla concede to the additional task language as drafted. For example, in paragraph 91, page 17, EPA cannot accept insertion of the word "separately." In paragraph 92, page 17, EPA is unwilling to delete the second-to-last sentence which reserves EPA's right, in part, to require Hecla to perform additional activities under section 3008(h) of RCRA, 42 U.S.C. § 6928(h), or any applicable law. Similarly, EPA is unwilling to delete the portion of the last sentence in paragraph 94, page 17, reserving EPA's right to request Hecla to perform additional tasks. Lastly, EPA is unwilling to delete the additional tasks language included in the first sentence of paragraph 111, page 20. Because any disagreements over the quality or timeliness of work performed may be addressed through dispute resolution, EPA accepts Hecla's proposal to delete the first sentence of paragraph 112.E, page 21.

As for the information bracketed by Hecla, EPA has no knowledge and therefore made no changes to paragraph 16, page 3, and is comfortable that paragraphs 60 and 61 provide adequate coverage in response to Hecla's question at the end of the Findings of Fact, Inspection subsection, page 8. Please note the numbering and referencing of paragraphs has been updated appropriately. Finally, please also note that the wording in the "Effective Date" section has been replaced with the standard language making the order effective upon filing with the Regional Hearing Clerk.

Eric Johnson has spoken highly of the recent facility inspection on September 24, 2003; stating that he felt the trip was both productive and informative. There was nothing in Eric's

recent inspection that would suggest altering the proposed order. However, having had the benefit of a site tour simultaneous with reviewing the closure plan, Eric poses the following questions and recommended changes to the closure plan:

Volume I, Section 2.2 Potential Borrow Source Materials Investigation, page 7. What is the proposed reclamation plan for these source material borrow sites? Will the areas be graded to allow for adequate revegetation? What native plant species and mulch will be used to control surface erosion? At what rates will grass/mulch be applied?

Volume I, Section 3.0 Closure Alternatives, page 8. Have the proposed design alternatives incorporated earthquake standards to ensure long-term stability of Pond 2? If not, why was this not included?

Volume I, Section 3.2.3 Alternative 2 (GCL) - Selected Alternative Cover System, page 12. How can Hecla better stabilize the embankment side slopes if bentonite becomes hydrated? Why isn't there any surface layer protection on the top cover areas (the outslopes will have a 2 inch thick layer of 1-inch rock)?

Volume I, Section 4.2.4 Drainage and Consolidation, page 17. How will Hecla determine that overall settlement has slowed to an acceptable rate? What is the rate at which additional settlement will not compromise the long-term integrity of the overall cover system?

Volume I, Section 4.2.6 Collection Ditch and Evaporation Pond Removal and Disposal, page 18. If lined evaporation ponds are re-constructed to contain additional leachate seepage, a protective netting/barrier should be used over the ponds to prevent migratory birds and/or other wildlife from being exposed to the leachate.

Volume I, Section 4.4.3 Surface Layer Placement, page 20. A surface layer consisting of at least 2- inches thick of 1-inch rock should also be incorporated on the top surface for superior long-term erosion protection from wind and/or rainfall (see comment re: Section 4.4.4).

Volume I, Section 4.4.4 Diversion Channel Erosion Protection Placement, page 21. A 24 hour, 100-year storm event should be calculated to design runoff and erosion protection of the diversion channel (and final cover system). If greater peak flow results from using the 24 hour, 100-year storm event vs. the proposed 6-hour, 25 year design, then this figure should be used to ensure greater stability and erosion control.

Volume I, Appendix C - HELP Modeling Results, Table 1 and Table 2. The surface cover system in Table 1 identifies a 6-inch layer of rock on outslopes only for all alternatives, and Table 2 identifies an 8-inch surface layer. However the text in Section 4.4.3, page 20 and Table 3 - Final Closure Plan Alternatives, page 27 identifies the use of 2-inches of 1-inch rock. Why didn't the HELP Model calculations use the proposed rock thickness of 2-inches? A higher rate of runoff (inches/year) would occur with a 2-inch layer of rock on outslopes vs. a 6 or 8-inch layer of rock.

Volume I, Appendix F - Runoff Evaluation and Erosion Protection Sizing Analysis

(Figures, Data and Calculations). Runoff calculations should use "poor conditions" due to the recent fire that eliminated the vegetative cover within the area contributing storm water runoff to the diversion channel. A more conservative figure (i.e., 86) should be used for the Soil Conservation Service curve number. It could be many years until groundcover is re-established as brush, neither sparse or dense.

Volume I, Appendix H - Long-Term Monitoring and Maintenance Plan. The Engineering Report does not stipulate that Hecla "will" inspect annually to verify that the final cover system is functioning properly and to ensure that no significant problems are developing. Instead, the Report uses the words "should be inspected..." What is the length of time that Hecla proposes to be responsible for annually monitoring the condition of Pond 2 for cover system repairs, continued seepage migration, etc. after construction is completed? The preventative maintenance activities states that "maintenance may be required for two or three years...", but there is no other long-term commitment mentioned in the Report. Who will complete the annual maintenance inspection?

Volume II, Section 1.5.6 Work Progress Schedule, page 9. EPA should receive a copy of construction progress reports once per month, including such items such as the existing time status, estimated time of completion, and cause of delays, if any.

Volume II, Section 2.3.6 Field Quality Assurance, page 19. Upon completion of the surface cover system, the CQA Engineer should certify that the cover was completed according to all specifications in the Final Closure Plan. The written certification should be submitted to EPA Region 8 within 30-days of completing construction.

Other general concerns which should be incorporated into the Pond 2 Final Closure Plan include (1) an alternative for complete waste removal, including estimated construction costs and identification of off-site disposal location(s); and (2) all potential borrow material locations identified on a site map(s) (these borrow areas should not be within any sensitive tribal locations, e.g., areas containing tribal artifacts, or cultural significance).

In addition to Eric's closure plan-related questions and comments, it is our understanding that Hecla will address the Band's and Tribe's comments and questions in the closure plan. Such comments include, but are not limited to, the anticipated length and manner of monitoring (including use of monitoring wells), and Hecla's plan for addressing additional leaching. Relatedly, we understand that Hecla committed to preparing a cost estimate for removal as a possible closure alternative per the Band's suggestion. For your information, the designated tribal contacts are Tara Marlowe, Environmental Director for the Paiute Tribe, and Glenn Rogers, Shivwits Band of Paiute Chairman. Please provide them with copies of the closure plan documents at your earliest convenience. Copies of the 2001 Apex Site Pond 2 sampling results were provided to the Band only on January 16, 2002.

I would appreciate it if after having reviewed draft 10/2/2003 of the consent order, you would contact me to arrange a conference call to discuss any remaining issues. Again, I am hopeful that Hecla will continue to work cooperatively with EPA to overcome the differences and finalize the order. I look forward to hearing your response.



Sincerely,

A handwritten signature in black ink, appearing to read 'AS', with a long horizontal stroke extending to the right.

Amy Swanson, Attorney  
Legal Enforcement Program

cc: Chris Gypton, Hecla Mining Co.  
John Galbavy, Hecla Mining Co.

bcc: Eric Johnson, 8ENF-T  
Donna Jackson, 8P-TA

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**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**IN THE MATTER OF:**

**Hecla Mining Company  
6500 Mineral Drive  
Coeur D'Alene, ID 83815-8788**

**EPA ID No. UTD982589848**

**Respondent**

**Docket No.**

**Proceeding Under Section 7003 of the  
Resource Conservation and Recovery Act,  
as Amended, 42 U.S.C. § 6973**

**ADMINISTRATIVE ORDER ON CONSENT**

**WHEREAS**, the Parties to this Administrative Order on Consent (the "Consent Order"), Hecla Mining Company and the United States Environmental Protection Agency, Region 8 ("EPA"), have agreed to the entry of this Consent Order, and have agreed that this Consent Order supersedes the Order Requiring Monitoring, Testing, Analysis and Reporting, Docket No. RCRA-8-99-06, issued under Section 3013 of the Resource Conservation and Recovery Act, ("RCRA") as amended, 42 U.S.C. § 6934(a) ("3013 Order"), it is therefore agreed and ordered that:

**I. JURISDICTION**

1. EPA has the authority to issue this Consent Order pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).
2. Hecla Mining Company ("Hecla" or "Respondent") agrees to undertake all actions required by the terms and conditions of this Consent Order. In any action by EPA or the United States to enforce the terms of this Consent Order, Respondent consents to and agrees not to contest the authority or jurisdiction of EPA to issue or enforce this Consent Order. Respondent's participation in this Consent Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Consent Order and is not an acknowledgment by Respondent that any past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment at the facility.

3. EPA maintains sole jurisdiction to implement and regulate the RCRA program within the exterior boundaries of the Shivwits Band of Paiute Indian Reservation.
4. This Consent Order is based upon the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by the Respondent and the public at EPA's Regional Office at 999 18<sup>th</sup> St., Suite 300, Denver, CO 80202-2466.

## **II. PARTIES BOUND**

5. The provisions of this Consent Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.
6. No change in ownership, corporate, or partnership status relating to the facility described in this Consent Order will in any way alter the status or responsibility of Respondent under this Consent Order. Any conveyance by Respondent of title, easement, or other interest in the facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Consent Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by this Consent Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.
7. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven (7) calendar days of the effective date of this Consent Order, or on the date of such retention, and Respondent shall condition all such contracts on compliance with the terms of this Consent Order.
8. Any documents transferring ownership and/or operations of the facility described herein from Respondent to a successor-in-interest shall include written notice of this Consent Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the facility, provide written notice of this Consent Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA.

## **III. FACILITY DESCRIPTION**

9. Respondent is a corporation organized under the laws of the State of Delaware, operating a waste facility ("Facility") on tribal trust land within the exterior boundaries of the Shivwits Band of Paiute Indian Reservation.
10. Pursuant to an Amendment to Lease entered into between Hecla and the Shivwits Band of Paiute Indian Tribe (the "Tribe") on September 25, 1995, the Respondent leases and is responsible for a parcel of property described approximately as: beginning at a point N 59° 30' West, 1510 feet from the Southeast Corner of Section 5, Township 42 South, Range 17 West, Salt Lake Base and Meridian, thence West, 560 feet, thence North 21°

40' West, 415 feet; thence North 34° 30' East, 250 feet; thence East, 526 feet; thence South 4° 26'31" East, 590 feet to the point of beginning. The parcel of land lies within the SE1/4, the E1/2 SW1/4 and S1/2NE1/4, Section 5 and the NW1/4, NE1/4, Section 8, Township 42 South, Range 17 West, Salt Lake Base and Meridian, within the reservation of the Shivwits-Paiute Band Indian Tribe, within Washington County, Utah (the "Leased Premises").

11. The Facility is located on approximately 8.28 acres of the original site lease and principally consists of a 500-foot diameter pond ("Impoundment") and adjacent evaporation pond. The Impoundment contains an open leachate collection trench partially constructed around its southwest side that collects leachate and drains it into the evaporation pond also located on its southwest side.
12. Groundwater near the Facility occurs in a confined limestone aquifer at a depth of 280 to 360 feet from the surface.
13. The groundwater has a total dissolved solids level in excess of 3000 mg/l which is unsuitable for potable use without treatment.
14. The Facility is located on the eastern slope of the Beaver Dam Mountains in an area that drains generally to the east towards the Santa Clara River.
15. There are no streams on or adjacent to the Facility; the nearest surface water is the Santa Clara River, a tributary of the Virgin River, approximately 2.5 miles away.
16. Runoff from the Facility and Impoundment outside of the collection trenches drains in a northeasterly direction into a catchment basin currently maintained by OMG Americas, Inc. (NOTE: This may have changed)
17. Livestock grazing and mining have comprised the two major uses of land in and around the Facility. Although no grazing leases presently exist on the Facility, cattle have been observed in the immediate area. The Impoundment is enclosed by a fence and gate adequate to keep livestock out.
18. Birds and other wildlife may access and ingest contaminants from the Facility, leachate collected in adjacent trenches and evaporation pond, and seepage occurring on the Facility's south side.

#### **IV. FINDINGS OF FACT**

##### **Ownership and Operation History:**

18. Beginning in March 1984 and continuing through 1988, the St. George Mining Company ("SGMC") constructed and operated a mill and tailings disposal facility on approximately 180 acres of tribal trust land located in Section 5 and Section 8, Township 42 South, Range 17 West, Salt Lake Base and Meridian, leased from the

Shivwits Band of Paiute Indian Tribe (the "Site"). The Site consists of thirty (30) acres for production, seventy (70) acres for general storage and waste disposal and eighty (80) unused acres.

19. During SGMC's period of operation, SGMC produced and disposed of wastes in three asphalt-lined waste impoundments on the Site, including the Impoundment (a/k/a Pond 2), and Ponds 1C, 2A, 3A, 3B North and 3B South.
20. At the end of SGMC's operations, the waste containment system on the Leased Premises consisted of eight ponds containing various amounts of waste solution and solids.
21. Hecla purchased the Site operation and lease from SGMC on or about March 19, 1989, for the purpose of continuing gallium and germanium extraction operations and producing zinc and silver by-product. As part of the proposed operations, Hecla planned to reprocess the wastes historically produced and disposed of on the property and utilize the existing waste areas for additional waste disposal. The waste impoundment facilities were designed to contain both existing waste and tailings to be produced from Hecla's operations.
22. Hecla submitted a Part A RCRA permit application in February 1990 to treat, store, and dispose of hazardous wastes. On May 8, 1990, Hecla provided EPA Region VIII with a summary of the facility's acid leaching operation, wherein Hecla concluded that because the acid leaching operation at the facility constituted mineral beneficiation, any wastes generated from this process were not hazardous waste as defined by RCRA Subtitle C regulations. Following EPA's concurrence with Hecla's conclusion, Hecla withdrew its Part A application on November 13, 1990. EPA assigned Hecla EPA hazardous waste identification number UTD982589848.
23. Hecla produced germanium concentrate and cathode copper on the Site from February to August 1990.
24. Hecla conducted cobalt sulfate operations on the Site from November 1992 until it sold the Site operation and lease to OMG Americas, Inc. ("OMG"), a wholly owned subsidiary of Mooney Chemicals, Inc., in August 1995.
25. Between the period November 1992 and August 1995, Hecla placed wastes from the cobalt sulfate operation into ponds 1A/B or 3A. The material was subsequently moved to the Impoundment.
26. At the time Hecla sold the Site operation and lease to OMG, Hecla entered into an Amendment to Lease with the Shivwits Band of Paiute on September 25, 1995, for the purpose of leasing and operating the Impoundment.
27. Hecla occupies the Leased Premises for maintaining a tailings impoundment for permanent disposal of wastes, including mined ores, mineral beneficiation wastes, and contaminated soils excavated and impounded from Hecla's and SGMC's industrial

operations on and in the immediate vicinity of the Leased Premises.

28. Pursuant to the Purchase and Sale Agreement ("Agreement") entered between Hecla and Mooney Chemicals, Inc., on or about August 2, 1995, Hecla agreed to reclaim and consolidate waste materials, old liners and excavated soils from areas on-site, including but not limited to the surge pond and pond 2A, the plant, office/shop and ore storage areas into the Impoundment prior to closing. Per this Agreement, Hecla was required to excavate all soils and waste materials above 80 parts per million for arsenic, lead and total petroleum hydrocarbons. These materials were placed untreated in the Impoundment.
29. Pursuant to the Agreement, Hecla agreed to move the waste materials contained in ponds 1A/B and 3A into the Impoundment by September 30, 1996. At the time of the Agreement, Hecla had already placed waste materials and old liners from pond 1C, 3B north and 3B south into the Impoundment.
30. Hecla currently employs a local contractor to perform maintenance of the leachate collection trench and evaporation pond at the facility. Hecla's corporate office is responsible for Hecla's environmental compliance with respect to the Leased Premises.

**Inspections, Investigations, Studies, Evaluations, and Analytical Information:**

31. On November 16, 1998, EPA performed a compliance evaluation inspection ("inspection") under RCRA and National Pollutant Discharge Elimination System authorities at the Impoundment. This inspection included sample collection.
32. As a follow-up to the November 16<sup>th</sup> inspection and sampling results, EPA sent Hecla a letter dated January 15, 1999, requesting information relating to the processes conducted and wastes generated during the years of Hecla's operations; the cleanup and management of feedstock, sludges, liquids, and ponds as part of the transfer of ownership; the pond rehabilitation, waste removal and relocation and pond refurbishment of existing ponds; and the construction and closure of the Impoundment.
33. Hecla timely responded to EPA's January 15, 1999 information request in a letter and attachments dated February 12, 1999.
34. Based on review of the February 12, 1999, response and results of EPA sampling conducted during the November 1998 inspection, EPA issued Hecla a formal Information Request pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, and Section 308 of the Clean Water Act, 33 U.S.C. § 1318, on June 1, 1999.
35. EPA received Hecla's response to the formal Information Request on June 30, 1999. The truthfulness, accuracy, and completeness of this information and the information submitted in the February 12, 1999 letter and attachments was certified as accurate on June 28, 1999, by David Suhr, Idle Properties Manager, Hecla Mining Company.

36. In the Hecla response, the Respondent stated that at the time of the Hecla purchase of the SGMC operation the following amounts of various materials are estimated to have been in the referenced ponds at the Site:

Pond	Contents	Estimated Amount
1A	not used	
1B	zinc sulfate	125 cu. yd.
1C	germanium operation waste	340 cu. yd.
2	leach tailings	56,800 cu. yd.
2A	leach tailings	23,272 cu. yd.
3A	iron sulfate	1,200 cu. yd.
3B north	iron sulfate	2,800 cu. yd.
3B south	iron sulfate	2,800 cu. yd.
surge pond		180 cu. yd.

37. Hecla sampled the SGMC mineral beneficiation wastes in the ponds listed in paragraph 36 above in 1988 prior to purchase of the facility from SGMC. The results of the analyses were submitted to EPA in the February 12, 1999 submittal and certified as accurate on June 28, 1999 by the Respondent. The samples were analyzed using the EP toxicity method. The Pond 1C solids exceeded the EP regulatory limit for arsenic and cadmium; the Pond 2A solids exceeded the EP regulatory limit for arsenic, and the Pond 3A solids exceeded the EP regulatory limit for arsenic.
38. Hecla has asserted that Pond 1C was never used by Hecla, that Pond 2A contained SGMC tailings only and that Ponds 3B North and 3B South were not used by Hecla and contained only mineral beneficiation wastes from SGMC. Hecla has further asserted that Ponds 1A/B and 3A were the only ponds used for new waste disposal by Hecla after its purchase of the Site operation and lease.
39. In July 1995, Hecla began cleanup from its operations at the Site. Wastes from certain ponds were consolidated by Hecla into the Impoundment. An estimated 30,000 cubic yards from Pond 1A/B, an estimated 17,000 cubic yards from Pond 3A, and the volumes stated in paragraph 37 for Ponds 1C, 2A, and the surge pond were consolidated into the Impoundment. An unspecified amount of unmilled ore stockpiled at the Facility at the time the gallium and germanium operation was shut down in 1990 was also placed into the Impoundment.
40. The 1998 sample analyses indicated that the Pond 1C material from germanium operations exceeded EP toxicity levels for arsenic and cadmium, and the Pond 2A materials, leach tailings, exceeded EP toxicity levels for arsenic. The ponds were not used or the materials in them treated after being sampled in 1988 or prior to being excavated and consolidated into Pond 2 in 1995.
41. Excavated soils from the ore storage area, plant, Pond 3B North, and Pond 3B South were also placed into the Impoundment. These soils contained arsenic at concentrations



up to 7000 parts per million ("ppm"), lead at concentrations up to 20,000 ppm, cadmium at concentrations up to 640 ppm, and chromium at concentrations up to 380 ppm.

42. During years of operation, per Attachment J, Information Request Response No. 5, submitted in response to EPA's January 15, 1999 Information Request, "Ore Sources from the Mine During the GA/GE Operations, the Apex Mine ore reserves contained 0.44 to 1.53 percentage of arsenic." In the February 12, 1999 response, Respondent indicated that when the gallium and germanium operation was shutdown in 1990, unmilled ore at the facility was placed into Pond 2 during cleanup. This material was not characterized or treated prior to disposal in Pond 2.
43. Hecla's February 12, 1999, response indicates that the acidic pond liquids remaining from the SGMC mining activities in Ponds 1C, 3B North and 3B South were neutralized with limestone and lime prior to relocation of the waste. Hecla did not identify which of the pond wastes were neutralized. Hecla also did not perform a waste determination on the neutralized material prior to placement in the Wastepile.
44. The Impoundment was capped with soil obtained from construction of ponds 3B and 3C. This cover had a crown to promote runoff when first placed on the Impoundment, but over time the cover has settled into a flat cover with localized depressions in which precipitation may pond. Leachate from the Impoundment is collected from the wet waste materials by the weight of the soil cap squeezing the waste liquids out of the Impoundment into a small lined trench immediately adjacent to the Impoundment solids along its downgradient edge. The trench flows into a small lined evaporation pond. The liner for both the trench and evaporation pond is UV resistant PVC.
45. During the site inspection on November 16, 1998, the evaporation pond was full and there was standing water adjacent to the pond and the collection trench. There was little to no freeboard in the pond and trench. The berms of the collection ditch and evaporation pond needed repair.
46. During the site inspection on November 16, 1998, EPA Inspectors observed seepage of liquids on the northeast side of the Impoundment. The seepage had formed white crystals on the surface of the soil which Hecla tested and determined to be benign. A liquid sample from this seep area was found to contain low levels of all RCRA metals, and slightly exceeded the level of 5 ppm for arsenic saturating the ground and forming crystalized deposits on the ground and rocks down gradient of the seep during the site inspection.
47. The November 1998 EPA samples were collected at five locations at or near the Site: 1) the pond water adjacent to the lined ditch, 2) the lined ditch, 3) the Hecla evaporation pond, 4) the "seep" area on the east side of the Impoundment, and 5) surface water from the catchment basin. The sample results detected various metals and chemicals commonly associated with mineral beneficiation, including arsenic, barium, cadmium, chromium, cobalt, copper, lead, nickel, selenium, silver, tungsten, and ammonia.

48. The analytical results for the EPA sample collected in November 1998 for the liquid sample collected from the seep area on the east side of the Impoundment detected arsenic at 5.82 ppm. Hecla's own analytical results detected arsenic in the liquid, when analyzed for dissolved metals, at 5.9 ppm.
49. Based on the information submitted and the analytical results, EPA has concluded that the Respondent has managed solid waste at the Facility in such a manner that releases to the environment have occurred at and from the Facility.

[Per EPA- paras. 60-61 provide adequate coverage]

#### **Effects on Human Health or the Environment:**

50. Hazardous constituents detected in EPA and/or Hecla samples include arsenic, barium, cadmium, chromium, cobalt, copper, lead, nickel, selenium, silver, tungsten, and ammonia. EPA has determined that the following are effects on human health or the environment that may be caused by the constituents detected:
- A. Arsenic: Arsenic is a known carcinogen, and a potential teratogenic agent. Its main path of exposure to humans is through inhalation and dermal absorption. Long term exposure can cause nerve and liver damage, narrowing of the blood vessels, and affect red blood cell production. Arsenic in the presence of acid may release a deadly gas, arsine. Arsenic has high acute toxicity to aquatic life, birds and land animals. It has a low solubility in water and is persistent in water, with a half-life of 200 days. Arsenic has high chronic toxicity to aquatic life, and is known to bioaccumulate in fish tissues.
  - B. Cadmium: High exposure to cadmium can cause acute health effects such as severe lung damage, fluid in the lungs, and in severe cases death. Cadmium is a probable cancer causing agent in humans, some studies link it to kidney and prostate cancer in humans, and it has been shown to cause lung and testes cancer in animals. It is a probable teratogen in humans, and may also damage the testes and affect the female reproductive cycle. Repeated low exposure can cause permanent kidney damage. Cadmium is highly persistent in water, with a half-life of greater than 200 days. Cadmium toxicity is influenced by water hardness, the harder the water the lower the toxicity. It has chronic and acute toxicity to aquatic life.
  - C. Chromium: Acute exposure to chromium dust can cause "metal fume fever", which causes fevers, chills, and muscle aches. Chromium is highly persistent in water and has a half-life of greater than 200 days. Hexavalent chromium is soluble and more mobile in groundwater than the trivalent chromium. Hexavalent chromium has a high acute and chronic toxicity to aquatic life.
  - D. Cobalt: Cobalt compounds may cause mutations in living cells, although it is not clear whether it is carcinogenic. Cobalt can damage the heart, causing heart

failure. Long term exposure may damage the thyroid and liver. Repeated exposure can cause scarring of the lungs. Cobalt and its salts have high acute toxicity to aquatic life.

- E. Lead: Lead is a probable teratogen in humans. The primary routes of exposure are through inhalation and ingestion. Chronic health effects include decreased fertility in male and females; kidney and brain damage. Chronic lead exposure causes nerve and behavioral effects in humans and could cause similar effects in birds and animals. Water hardness controls the toxicity of lead to aquatic life, the softer the water the greater the toxicity. It has a high chronic toxicity to aquatic life.
- F. Mercury: Exposure to high levels can cause pulmonary edema and death. Mercury compounds are human teratogens and may be embryotoxic. Chronic exposure can lead to kidney and damage. Acute and chronic exposure can lead to tremors, loss of memory, hallucinations and psychosis. Mercury (II) and methyl mercury have high acute and chronic toxicity to aquatic life.
- G. Nickel: Nickel is a probable human carcinogen and may damage the developing fetus. High exposure through inhalation can lead to pulmonary edema and death. It can cause damage to the lungs, heart, liver and/or kidney. Nickel and its compounds have a high acute and chronic toxicity to aquatic life.
- H. Selenium: There are generally three types of selenium toxicity: acute selenosis, subacute selenosis and chronic selenosis. The acute condition results in unsteady walking, labored breathing, liver congestion, degeneration of the gastrointestinal tract, gallbladder and bladder, and erosion of the long bones. Subacute selenosis results in neurological dysfunction, including impaired vision, ataxia, disorientation, and respiratory distress. In grazing livestock, it is referred to as "blind straggers". Chronic selenosis results in skin lesions, emaciation, hoof necrosis and loss in animals. In humans, chronic selenosis is characterized by fatigue, anorexia, gastroenteritis, enlarged spleen, and hepatic degeneration.
- I. Silver: The critical effect in humans ingesting silver is argyria, a permanent bluish-gray discoloration of the skin. Hepatic necrosis and ultrastructural changes of the liver have been induced by silver administration to vitamin E and/or selenium deficient rats.

#### **IV. CONCLUSIONS OF LAW**

- 51. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- 52. Respondent has handled "solid waste" within the meaning of Section 1004(27) of the Act, 42 U.S.C. § 6903(27).

53. Respondent has contributed and/or is contributing to the handling, storage, treatment, transportation or disposal of solid waste at the Site within the meaning of Section 7003 of RCRA, 42 U.S.C § 6973.
54. Respondent's contribution of solid waste to and/or handling of solid waste at the Site may currently present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003.

#### **V. ORDER**

55. Based on the above and on other information contained in the administrative record for this Consent Order, EPA has determined that the activities required by this Consent Order (the "Work") are necessary to protect health or the environment. Respondent agrees to perform the Work specified in this Consent Order in the manner and by the dates specified herein. All Work undertaken pursuant to this Consent Order shall be performed in a manner consistent with this Consent Order, including all documents incorporated herein pursuant to this Consent Order, and all applicable laws.

#### **VI. WORK TO BE PERFORMED**

56. Respondent shall plan, implement, perform, and complete all actions required by this Consent Order in accordance with the standards, criteria, specifications, requirements, and schedules set forth herein, including schedules set forth in work plans submitted pursuant to this Consent Order, or as modified by mutual written agreement between the parties.
57. Within fifteen (15) calendar days of the effective date of this Consent Order, Respondent shall post signs along the perimeter of the Impoundment stating "Danger - Solid Waste Impoundment - Unauthorized Personnel Keep Out. This Area May Be Dangerous to Human Health." These signs must be legible from a distance of at least twenty five (25) feet from each sign and in both English and Spanish. The perimeter signs shall be placed at a maximum spacing of 200 feet around the perimeter of the Impoundment.
58. In order to restrict unauthorized access to the Impoundment, Respondent shall ensure that the fence located around the perimeter of the Impoundment is locked at all times except when it is necessary to perform work pursuant to this Order, or to add or remove materials to or from the Impoundment.
59. Pursuant to the 3013 Order, Respondent was ordered to submit a written proposal to EPA for carrying out monitoring, testing, analysis, and reporting to ascertain the nature and extent of the hazard posed by any hazardous wastes that are present at or that may have been released from the Respondent's Facility. Without waiving its right to contest EPA's assertion that hazardous waste is present at or has been released from its Facility, Respondent submitted such a proposal on January 20, 2000.
60. The Respondent submitted a Revised Soils Sampling and Analysis Workplan ("Revised

Workplan") to EPA on August 31, 2000, based on EPA comments to the January 20, 2000 proposal. EPA approved the Revised Workplan on September 24, 2001.

61. The Respondent conducted an investigation of the Impoundment in accordance with the Revised Workplan beginning October 1 through October 3, 2001. All laboratory testing was completed by November 16, 2001. The results of the investigation are set forth in a document provided by the Respondent to EPA on December 3, 2001, entitled "Results of October 2001 investigations; Apex Site Pond 2 Soils Sampling and Analysis." (the "October 2001 Report").
62. The October 2001 Report sets forth a conceptual Closure Work Plan based on a conclusion that no seepage migration from the Impoundment into the soil could be identified. (Attachment A).
63. Within forty-five (45) days of filing this Consent Order Prior to finalizing this Consent Order, Respondent shall submit a draft Closure Work Plan to EPA for review, comment and approval. The Closure Work Plan shall include a minimal risk assessment based on Steps 1 and Step 2 of the 8-step ecological risk assessment process for Superfund entitled "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments, July 1997." The Closure Work Plan shall include plans and designs for dewatering, if necessary, and reclamation of both the main impoundment and the evaporation pond located immediately adjacent to the Impoundment on the southwest side in its closure work plan. The Closure Work Plan also shall include a water management plan to address the liquid captured during the dewatering phase, if necessary, including but not limited to plans for dealing with the residual contamination and later sampling and excavation relating to the recaptured liquids, however, such potential water management plans shall not include invasive techniques such as drilling into the mass of the Impoundment. Relatedly, Hecla shall specify its plans for minimizing infiltration and maximizing evaporation, and treating and disposing of the run-off liquid. The Closure Work Plan shall also propose alternatives for the management, stabilization and/or removal of all contaminated soils or sediments exceeding established risk levels shown to be protective of human health in an industrial use scenario. The proposed alternatives must include measures to ensure appropriate management of wastes and wastestream residues during implementation of said alternatives, adhere to accepted engineering practices, and be capable of implementation in compliance with all applicable RCRA requirements for mineral beneficiation wastes. The Closure Work Plan shall be attached to this Consent Order as Attachment A was approved by EPA on or about October 2, 2003.
64. Respondent hereby agrees to implement the Closure Work Plan within thirty (30) days of filing of this Consent Order.
65. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to the Consent Order. Progress reports for each month's activities will be due on the 28<sup>th</sup> day of the following month. The requirement to submit progress reports will

arise after the date of receipt of EPA's approval of the Closure Work Plan and will continue until all tasks required by the Consent Order have been completed. These reports shall include the following information: a) activities accomplished and progress made during the reporting period; b) problems and resolved solutions; c) sampling/laboratory activities, samples collection, analyses requested, and analytical results received; d) personnel or schedule changes; e) activities planned for the next reporting period; and f) estimated or actual costs for the activities planned.

66. Within thirty (30) days of the completion of all tasks required by the Closure Work Plan, Respondent shall submit for EPA review and approval a Completion Report summarizing the actions taken to comply with the Closure Work Plan. The Completion Report shall have accompanying appendices containing all relevant documentation generated, including analytical data, waste determinations, manifests, engineering designs, invoices or purchase orders, bills, contracts, receipts, and canceled checks.
67. The proposed Closure Work Plan and all reports or documents required to be submitted under this Consent Order shall be mailed to the following EPA representatives:

Eric Johnson  
U.S. Environmental Protection Agency  
Region 8, 8ENF-T  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

68. Copies of the written proposal and all reports or documents required to be submitted under this Consent Order shall be simultaneously mailed to the following Tribal and BIA representatives:

Glenn Rogers, Chairman  
Shivwits Band of Paiute Indian Tribe  
P.O. Box 448  
Santa Clara, UT 84765

John Krause  
Bureau of Indian Affairs Phoenix Area Office  
U.S. Department of Interior  
P.O. Box 10  
Phoenix, AZ 85001

Deborah Hamlin,  
BIA Southern Paiute Field Station, Branch of Natural Resources  
P.O. Box 720  
St. George, UT 84771

#### **VIII. DISPUTE RESOLUTION**

69. If Respondent disagrees, in whole or in part, with any EPA disapproval or other decision or directive made by EPA pursuant to this Order, Respondent shall notify EPA in writing of its objections, the basis for its position, and any matters which it considers necessary for determination, within fourteen (14) days of receipt of EPA's disapproval, partial approval, decision, or directive. EPA and Respondent shall then negotiate in good faith and will have an additional fourteen (14) days from EPA's receipt of Respondent's objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by representatives of each party and incorporated into this Order. If the parties are unable to reach agreement within this fourteen (14) day period, Respondent may request mediation of the dispute employing a mediator based in Denver, Colorado acceptable to both parties, and/or Respondent and EPA may submit additional written information to the Director of the Solid and Hazardous Waste Program, EPA Region 8. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation, submitted pursuant to this section. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, EPA will respond to Respondent's arguments and evidence and provide Respondent with EPA's written decision on the dispute signed by the EPA Region 8 Director of the Solid and Hazardous Waste Program.
70. Any agreement or decision made pursuant to this section by EPA shall be reduced to writing, shall be deemed incorporated into this Consent Order without further order or process, and shall be binding on the parties. If the United States brings an action to enforce any such decision, Respondent has and reserves the right to raise any defenses it would otherwise be permitted to raise under applicable principles of administrative law.
71. Stipulated penalties may not be assessed for alleged non-compliance with requirements of this Order which are the subject of dispute resolution during the pendency of such proceedings hereunder.

#### **IX. SUBMISSIONS / AGENCY REVIEW**

72. EPA will review all plans, reports, or other submittals required under this Consent Order, using its best efforts to complete such review within forty-five (45) days of their receipt by EPA. EPA may: (a) approve the submission; or (b) approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the work. As used in this Consent Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in (a) or (b) of this paragraph.
73. Prior to approval in writing, or approval with modifications in writing, no plan, report, or other submittal shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute approval, nor shall any oral approval or oral assurance of approval be considered as binding.



74. Upon receipt of a notice of disapproval in paragraph 72(c) above or a request for a modification, Respondent shall, within thirty (30) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, schedule, other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the written direction of EPA, to take any action required by any non-deficient portion of the submission.
75. All plans, reports, and/or other submittals required by this Consent Order are, upon approval or approval with modifications by EPA not inconsistent with the approved Closure Work Plan, incorporated into this Consent Order as if fully set forth in the text herein. Any noncompliance with such EPA-approved plans, reports, specifications, schedules, and attachments shall be noncompliance with this Consent Order. Oral advice or approvals given by EPA representatives shall not relieve Respondent of its obligation to obtain any formal, written approvals required by this Consent Order.
76. In all instances which this Consent Order requires written submissions to EPA, each submission must be accompanied by the following certification signed by a "responsible official":

Under penalty of law, I certify to the best of my knowledge, information, and belief, after appropriate inquiries of all relevant persons involved in the preparation of this submission and in reliance upon the information provided to me by such persons, that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

For the purpose of this certification, a "responsible official" means a person in charge of a principal facility function, or any other person who performs similar decision-making functions for the facility.

#### **X. PROJECT COORDINATORS**

77. EPA hereby designates as its Project Coordinator:
- Eric Johnson  
U.S. Environmental Protection Agency  
Region 8, 8ENF-T  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466
78. Respondent hereby designates as its Project Coordinator:
- Chris C. Gypton  
Hecla Mining Company



6500 Mineral Drive  
Couer d'Alene, ID 83815-8788

79. Each Project Coordinator shall, on behalf of the party that designated that Project Coordinator, oversee the implementation of this Consent Order and function as the principal project contact.
80. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided as soon as practicable.

#### **XI. THREATS TO PUBLIC HEALTH OR THE ENVIRONMENT**

81. If EPA determines that activities in compliance or noncompliance with this Consent Order have caused or may cause a release of hazardous waste or hazardous constituents, that may present an imminent and substantial endangerment to the public health or to the environment, EPA may require that Respondent stop further implementation of this Consent Order for such a period of time as may be needed to (1) abate any such release or threat of release and/or (2) undertake any action which EPA determines is necessary to abate such release or threat of release; and may thereafter require Respondent to resume implementation of this Consent Order.

#### **XII. SAMPLING AND DOCUMENT AVAILABILITY**

82. Respondent shall submit to EPA upon request, the results of all sampling and/or tests or other data generated by, or on behalf of, the Respondent in implementing the requirements of this Consent Order.

#### **XIII. ACCESS**

83. Respondent shall provide access at all reasonable times to the facility, subject to the consent of the Tribe where access to the Tribe's land is necessary, and to all records and documentation relating to conditions at the facility and the activities conducted pursuant to this Consent Order to EPA and its employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the facility in order to conduct activities which EPA determines to be necessary. Operations requiring the use of heavy equipment, such as intrusive sampling of the Impoundment, may be completed only after discussion with Hecla concerning appropriate safety and logistics for such operations and Hecla approval of specific procedures for such operations.
84. To the extent that activities required by this Consent Order, or by any approved work plans prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts as used in this paragraph shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements.

85. Nothing in this Consent Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act.
86. Respondent shall notify the EPA, Tribal and BIA representatives identified in paragraphs 67 and 68 in writing at least ten (10) calendar days before engaging in any field activities at the facility, including but not limited to sampling, remediation, well-drilling, and installation of equipment. Respondent shall allow EPA, Tribal or BIA representatives to be on-site at the time of any field activities, provided such representatives comply with EPA-approved health and safety plan(s) for the Work.
87. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Consent Order, provided such representatives have their own sample container and preservatives, and take immediate custody of such split and/or duplicate samples, and provided that there is sufficient sample volume available to obtain a split and/or duplicate sample.

#### **XIV. RECORD PRESERVATION**

88. Respondent shall retain, during the pendency of this Consent Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Consent Order. Respondent shall notify EPA, in writing, at least ninety (90) days in advance of the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records not otherwise privileged from disclosure. Such written notification shall reference the caption, docket number and date of issuance of this Consent Order and shall be addressed to:

Sharon Kercher, Director  
Technical Enforcement Program  
U.S. EPA Region 8, 8ENF-T  
999 18<sup>th</sup> Street, Suite 500  
Denver, CO 80202-2466

In addition, Respondent shall provide data, records and documents retained under this Section at any time before the expiration of the five-year period at the written request of EPA.

#### **XV. INFORMATION SUBMITTED TO EPA**

89. Any information that Respondent is required to provide or maintain pursuant to this Consent Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

90. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Consent Order. Any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made in accordance with 40 C.F.R § 2.204(e)(4). Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 C.F.R Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent.

#### **XVI. RESERVATION OF RIGHTS**

91. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Consent Order, and to ~~separately~~ order that Respondent perform additional tasks pursuant to its authority under applicable law.
92. Nothing in this Consent Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to Respondent as may be necessary. Nothing herein shall limit the power and authority of EPA to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the facility. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), or any other applicable law. Nothing, other than the agreed upon terms of this Consent Order, shall preclude the Respondent from exercising any of its rights under the law.
93. This Consent Order shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which EPA has under RCRA or any other applicable law.
94. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to any failure of Respondent to comply with any applicable laws and regulations and with any of the requirements of this Order, including but not limited to, the right to disapprove of work performed by Respondent, to request that Respondent perform additional tasks, and the right to perform any portion of the work herein.
95. Hecla hereby reserves all of its defenses, including but not limited to those relating to whether an imminent and substantial threat to human health and the environment may exist at the Site, whether the waste and other materials at issue in this proceeding

constitute hazardous wastes under subtitle C of RCRA, and whether EPA may require additional work be performed by Hecla at the Site not required by or consistent with the Closure Work Plan.

#### **XVII. FORCE MAJEURE**

96. Respondent agrees to perform all requirements under this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a force majeure event. For purposes of this Consent Order, a force majeure event is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by the Respondent, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Consent Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance. Nothing in this Consent Order precludes the parties from extending any of the time frames by mutual agreement; however, such agreement must be memorialized in writing prior to the due dates.
97. Respondent shall notify EPA orally within 24 hours after the event, and in writing within five days after Respondent becomes or should have become aware of events which constitute a force majeure event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall waive any claim of force majeure by Respondent.
98. If EPA determines a delay in performance of a requirement under this Consent Order is or was attributable to a force majeure event, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Consent Order which are not directly affected by the force majeure event.

#### **XVIII. PUBLIC COMMENT**

99. Pursuant to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), EPA will announce the availability of this Consent Order to the public for review and comment. EPA will accept comments from the public for a period of thirty (30) calendar days after such announcement. If sufficient interest warrants, as determined by EPA, a public meeting will be held. At the end of the comment period, EPA will review all comments received during the comment period and/or at any public meeting. EPA will forward to Respondent a copy of all such comments and EPA's written response to such comments, whereupon Respondent shall have seven (7) days to submit a response to EPA. EPA shall then either:

- A. Determine that the Consent Order should be made finally effective in its present form, and entered with the Regional Hearing Clerk, in which case Respondent shall be notified; or
- B. Determine that modification of the Consent Order is necessary, in which case Respondent shall be informed as to the nature of all required changes. If Respondent agrees to the modifications, the Consent Order shall be so modified, signed by the parties, and entered with the Regional Hearing Clerk.

#### **XIX. OTHER APPLICABLE LAWS**

- 100. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, tribal, and local laws, regulations, permits, and ordinances.
- 101. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, tribal, or local laws, regulations, permits, and ordinances.
- 102. This Consent Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, tribal or local law. This Consent Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Consent Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed as conditions of such permit or of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **XX. OTHER CLAIMS**

- 103. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous waste constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or migrating from the facility.
- 104. By issuance of this Consent Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts of omissions of Respondent or its agents, contractors, subcontractors or other representatives.
- 105. Neither the United States nor EPA shall be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Consent Order.

**XXI. SUBSEQUENT MODIFICATION OF CONSENT ORDER**

106. Except as provided in paragraph 108, this Consent Order may only be modified by written amendment signed by EPA Region VIII Technical and Legal Enforcement Supervisors.
107. Modifications to any schedule adopted pursuant to this Consent Order may be made in writing by EPA, subject to agreement by Respondent or dispute resolution hereunder with respect to such schedule change(s).
108. No informal advice, guidance, suggestions, or comments by EPA shall be construed to modify the requirements of this Consent Order. Routine communications exchanged verbally, in person, by telephone or by electronic mail, between the parties to facilitate the orderly conduct of work contemplated by this Consent Order shall not alter or waive any rights and/or obligations of the parties under this Consent Order.

**XXII. STATEMENT OF SEVERABILITY**

109. If any provision or authority of this Consent Order, or the application of this Consent Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Consent Order shall not be affected thereby.

**XXIII. TERMINATION AND SATISFACTION**

110. Respondent may seek termination of this Consent Order by submitting to EPA a written document which indicates Respondent's compliance with all requirements of this Consent Order, and the associated dates of approval correspondence from EPA. The provisions of this Consent Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement for Record Preservation and Reservation of Rights" (Acknowledgment). The Acknowledgment shall specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed.
111. The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order and which are agreed to by Respondent, have been satisfactorily completed. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including without limitation, Section XIV (Record Preservation) and Section XIX (Other Applicable Laws).

**XXIV. FAILURE TO COMPLY**

112. For each day, or portion thereof, that Respondent fails to perform fully any requirement of the Consent Order in accordance with the schedule established pursuant to the Order, Respondent shall be liable as follows:
- A. For failure to submit an amended Closure Work Plan or the Completion Report, Respondent shall pay a stipulated penalty of \$500 per document for each late day until the documents are submitted.
  - B. For failure to submit a progress report, Respondent shall pay a stipulated penalty of \$250 for each monthly report.
  - C. For failure to provide the notification required in this Consent Order, Respondent shall pay a stipulated penalty of \$500 for each day the notification is late.
  - D. For "work" that has not been completed as required by the Closure Work Plan, Respondent shall pay a stipulated penalty of \$250 for each day such failure remains uncured.
  - E. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.
  - F. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties, unless Respondent invokes dispute resolution hereunder with respect to the event giving rise to such stipulated penalties.
  - G. Respondent shall pay stipulated penalties by submitting a cashier's or certified check, to the order of the "treasurer, United States of America," to:

U.S. EPA, Region 8  
(Regional Hearing Clerk)  
P.O. Box 360859M  
Pittsburgh, PA 15251

Respondent shall provide copies of the checks to:

Regional Hearing Clerk  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

and

Amy Swanson, 8ENF-L  
Legal Enforcement Program  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

- H. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Treasury tax and loan rate is in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of twelve (12) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid in accordance with 4 C.F.R. § 102.13(d) and (e).

#### **XXV. EFFECTIVE DATE**

113. The effective date of this Consent Order shall be the date of filing with the Regional Judicial Officer.
114. Modifications made by EPA to this Consent Order are effective on the date such modification is received by the Respondent, and after it is filed with the Region Hearing Clerk.

**HECLA MINING COMPANY**  
**Respondent.**

By: \_\_\_\_\_  
Authorized Representative

Date: \_\_\_\_\_



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**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 8**

**Complainant.**

By: \_\_\_\_\_

Michael T. Risner, Director  
David J. Janik, Supervisory Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Sharon Kercher, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: \_\_\_\_\_